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**Datasheet for the decision
of 13 November 2025**

Case Number: T 2496/22 - 3.4.02

Application Number: 12181611.0

Publication Number: 2701132

IPC: G08B25/04, G08B29/18, H04L12/40

Language of the proceedings: EN

Title of invention:
Alarm device having a local energy storage unit, and bus-based alarm system

Patent Proprietor:
Novar GmbH

Opponent:
Hekatron Vertriebs GmbH

Relevant legal provisions:
EPC Art. 123(2), 112(1)(a), 112a(2)(c), 113(1)
RPBA 2020 Art. 13(2)
EPC R. 106, 43(4)

Keyword:

Amendments - allowable (no)

Amendment after summons - exceptional circumstances (no)

Petition for review - fundamental violation of the right to be heard (no)

Referral to the Enlarged Board of Appeal - admissibility (no)

Decisions cited:

G 0001/99, T 0390/90, T 0972/91, T 1242/04, T 2392/10



Beschwerdekammern

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Case Number: T 2496/22 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 13 November 2025

Appellant: Hekatron Vertriebs GmbH
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
14 September 2022 concerning maintenance of the
European Patent No. 2701132 in amended form.**

Composition of the Board:

Chairman R. Bekkering
Members: C.D. Vassoille
D. Rogers
A. Hornung
G. Decker

Summary of Facts and Submissions

- I. The appeal of the opponent is against the decision of the opposition division with which European patent no. 2 701 132 was maintained in amended form on the basis of auxiliary request 1.
- II. In a communication under Article 15(1) RPBA, annexed to the summons to oral proceedings, the Board set out its preliminary opinion that the main request (the patent in the form allowed by the opposition division) and auxiliary requests 1 and 2, both filed for the first time with the reply to the appeal, did not meet the requirement of Article 123(2) EPC.
- III. By letter dated 11 October 2025, the patent proprietor submitted further arguments together with the main request and auxiliary requests 1 to 6. Auxiliary requests 1, 2 and 4 to 6 were newly filed while auxiliary request 3 corresponds to the former auxiliary request 2 filed with the reply to the appeal. Auxiliary request 5 corresponds to auxiliary request 2 filed in the proceedings before the opposition division.
- IV. Oral proceedings before the Board took place on 13 November 2025.

The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietor) at the end of the oral proceedings requested that the appeal be dismissed (main request), or alternatively, that the decision under appeal be set aside and the patent be maintained

upon the basis of one of auxiliary requests 1 to 6, all filed under cover of a letter dated 11 October 2025. The respondent further requested to refer questions to the Enlarged Board of Appeal.

V. Claim 1 of the main request has the following wording:

"An alarm device for a bus connected alarm system comprising:
a bus connection unit (17) for connecting the alarm device with a bus (3) for supplying control signals and an electric power;
a power consuming unit (11, 15);
a controller (21) for controlling the operation of the alarm device (1) based on the control signals;
the alarm device further comprising an energy storage unit (5) for storing electrical energy;
a switching unit (25) for switching between a first power supply mode, where power is supplied through the bus (3) alone, to a second power supply mode where at least part of the power is supplied through the energy storage unit (5);
wherein the controller (21) is configured to control the switching unit (25) so as to switch to the second power supply mode, when the power consuming unit (11, 15) is activated, and
wherein the power consuming unit (11, 15) comprises a unit for outputting at least one of an acoustical and an optical alarm."

VI. The first auxiliary request differs from the main request in that dependent claims 6 and 9 to 12 have been deleted.

VII. The second auxiliary request differs from the main request in that dependent claims 2 to 7 and 9 to 12 have been deleted.

VIII. The third auxiliary request differs from the main request in that dependent claims 7 and 9 have been deleted and claims 1 and 8 (new claim 7) comprise the following additional feature after the feature "... through the energy storage unit (5)":

"and wherein the energy storage unit (5) is a replacement for the bus voltage (UC), so as to supply all units which are otherwise supplied by the bus voltage".

IX. The fourth auxiliary request differs from the main request in that dependent claims 2 to 7 and 9 to 12 have been deleted and claims 1 and 8 (new claim 2) comprise the following additional feature after the feature "... through the energy storage unit (5)":

"and wherein the energy storage unit (5) is a replacement for the bus voltage (UC), so as to supply all units which are otherwise supplied by the bus voltage".

X. Claim 1 of the fifth auxiliary request differs from the main request in that claims 1 and 8 comprise the following additional feature at the end of the claim:

"; and wherein the power consuming unit (11, 15) is one of a loudspeaker, a siren, and a flasher".

XI. The sixth auxiliary request differs from the main request in that dependent claims 2 to 7 and 9 to 12 have been deleted and claims 1 and 8 (new claim 2)

comprise the following additional feature at the end of the claim:

"; and wherein the power consuming unit (11, 15) is one of a loudspeaker, a siren, and a flasher".

XII. At the oral proceedings, the admission of auxiliary requests 1 and 2 into the proceedings was discussed with the parties. After deliberation, the Chairman announced the Board's decision not to admit auxiliary requests 1 and 2 into the proceedings. The respondent filed a written Rule 106 EPC objection against the Board's decision not to admit auxiliary request 1 into the proceedings. It also filed in writing three questions that it wished to have referred to the Enlarged Board of Appeal.

XIII. After deliberation the Chairman stated the Board's opinion that the Rule 106 EPC objection should be dismissed and that the request to refer questions to the Enlarged Board of Appeal should be rejected.

Reasons for the Decision

1. Main request - Added subject-matter (Article 123(2) EPC)

- 1.1 The main request does not meet the requirement of Article 123(2) EPC, as the combination of claim 1 with claims 2 to 12 of this request lacks a basis in the application as originally filed. Reference is made below to the published application EP 2 701 132 A1, hereinafter referred to as "the application as filed".
- 1.2 The opposition division considered original claims 1, 8 and 9, in conjunction with paragraphs [0003], [0007], [0012] and [0027] of the application as filed, to provide a sufficient basis for the disclosure of the new feature combinations in claims 2 to 12 of the current main request (see point 6.1.2 of the reasons for the decision under appeal). It was argued that the skilled person, taking into account original claims 1, 8 and 9 together with these passages, would have directly and unambiguously derived that the bus-connected alarm system of original claim 9 could comprise alarm devices including the specific power consuming units of original claim 8, and that a similar reasoning applied to original dependent claims 2 to 7 and 10 to 13. Furthermore, the opposition division found that the relevant passages made it absolutely clear that the features of claim 8 were generally preferred and could therefore have been combined with the features of the other original dependent claims.
- 1.3 The Board does not concur with the reasoning of the opposition division. According to the established principles applied in the EPO, often referred to as the

"gold standard" for assessing compliance with Article 123(2) EPC, the new feature combinations in claims 2 to 12 of the main request, which all depend on claim 1 and thus all include the feature of original claim 8, must be directly and unambiguously derivable from the content of the application as filed as a whole. If these combinations are not disclosed in the original claims, as is the case here, it must be determined whether they are directly and unambiguously disclosed elsewhere in the application.

1.4 In line with these principles, particular attention must be paid to the role of claim dependencies in the original disclosure. They serve, among other things, to indicate which feature combinations were intended to form part of the invention from the outset. Ignoring these dependencies risks disregarding the structured disclosure provided by the original claims and replacing it with an ex post reconstruction of the invention. Consequently, any deviation from the originally claimed combinations must be explicitly disclosed elsewhere in the application as filed or, at the very least, implied by it. Such implicit disclosure requires that the combinations in question are a direct and unambiguous consequence of what is explicitly stated in the application, taking into account the skilled person's common general knowledge. It is therefore limited to what a person skilled in the art would objectively regard as necessarily implied by the explicit content of the application as filed.

1.5 The Board notes that, in practice, the wording of the claims is usually repeated somewhere in the description, often verbatim. For original claim 8, however, this is not the case. Its wording does not appear in the original description and this absence was

also not contested by the respondent. Nor is the feature of original claim 8 disclosed elsewhere in the application as filed in different or equivalent wording. Added to this is the particular circumstance that, in the present case, claim 8 as filed was dependent solely on claim 1.

- 1.6 In the current main request, the subject-matter of original claim 8 (corresponding to granted claim 8) has been incorporated into claim 1. The wording of original claim 8, which now appears in identical form in claim 1 of the main request, is as follows:

"... the power consuming unit (11, 15) comprises a unit for outputting at least one of an acoustical and an optical alarm".

- 1.7 The Board agrees with the appellant, and this was also not contested by the respondent, that the wording of claim 8 clearly indicates that the power consuming unit may comprise not only a unit which outputs either an acoustic **or** an optical alarm, but also a unit which outputs both an acoustic **and** an optical alarm.

- 1.8 The respondent essentially argued that the combinations of claim 1 with the further claims 2 to 12 of the main request were derivable from figures 1, 2 and 12, as well as from the original description in paragraphs [0003], [0007], [0027], and [0085].

The Board cannot agree with this argument. Paragraph [0003], at most, indicates that the alarm devices may include smoke detectors, intrusion detectors, video cameras, fire extinguishers, electronic locks, and acoustic and optical alarm transmitters. However, it does not disclose a power

consuming unit comprising a unit capable of outputting both an acoustic and an optical alarm.

From paragraph [0007] it is generally derivable that alarm devices may include acoustic and optical alarm transmitters. Nevertheless, there is no disclosure of a unit being comprised in a power consuming unit that is capable of outputting both an acoustic and an optical alarm.

Paragraph [0027] teaches the person skilled in the art that examples of power consuming units are loudspeakers, sirens, flashers, and other flashing lights. However, it does not provide any indication that a single power consuming unit may include a unit capable of outputting both an acoustic and an optical alarm.

Paragraph [0085], at most, discloses that an alarm device can have one or more power consuming units and that arbitrary combinations of these power consuming units may be provided with a respective alarm device as needed. It does not, however, provide any indication to the person skilled in the art that a power consuming unit may comprise a unit capable of outputting both an acoustic and an optical alarm.

The figures referred to by the respondent, in particular figures 1, 2, and 12, do not show a power consuming unit in an alarm device comprising a unit that can output both an acoustic and an optical alarm.

- 1.9 None of the passages and figures relied upon by the respondent thus provides any indication that a power consuming unit as defined in original claim 8, which comprises a unit within a power consuming unit capable

of outputting both an acoustic and an optical alarm, could be present, nor that such a power consuming unit could be combined with the further features set out in original claims 2 to 7 and 9 to 13.

1.10 The respondent's suggestion to consider the application as a whole does not alter this conclusion, all the more so as the Board has, in any event, carried out such a consideration. The Board, however, reaches a different conclusion in this regard. The application as filed, taken as a whole and in particular in light of the relevant passages cited above, conveys the overall impression that an alarm device may indeed comprise one or more power-consuming units, but that each such unit is associated with a specific alarm function. The mere presence of original claim 8 does not, in itself, provide a basis for assuming that its subject-matter is disclosed in combination with other features in the application. Any conclusion by the person skilled in the art that such combinations might be possible would remain speculative and therefore fall short of an implicit disclosure. The "gold standard" requires a direct and unambiguous disclosure (see point 1.3 above), not a conclusion that is merely plausible or conceptually conceivable. This applies all the more in the present case, where claim 8 was originally dependent solely on claim 1. This dependency, on the contrary, implies that a combination with the features of the other original claims was not envisaged.

1.11 Regarding the latter aspect, i.e. the fact that original claim 8 depended solely on claim 1, the respondent argued that the original claim structure, where claim 8 was presented "as a separate dependent feature", precisely reflected the applicant's intention that this feature could be combined not only with the

subject-matter of independent claim 1 but also with any combination of the other dependent claims.

The Board cannot agree with this argument. The function of a dependent claim is to introduce a specific, additional limitation to the subject-matter of the claim on which it depends (see Rule 43(4) EPC), and not to imply that such additional limitation is automatically disclosed in combination with limitations defined in other dependent claims.

Accordingly, when a dependent claim is originally drafted so as to refer solely to a single independent claim, this drafting choice normally indicates to the person skilled in the art that the added feature is intended as a stand-alone optional refinement of that particular embodiment, and not as a feature meant to be freely combined with further limitations disclosed elsewhere in the set of dependent claims. The Board notes again that any supposition that such further combinations were intended remains merely a hypothetical inference, rather than a direct and unambiguous teaching derivable from the application as filed.

- 1.12 The Board further notes that the invention is specifically directed to addressing the technical problem of high power consumption associated with alarm devices, as explicitly set out in paragraph [0007] of the application as originally filed.

However, contrary to the respondent's argument, the Board does not see how this technical problem or a potentially modular/flexible character of the claimed device, could have implied to the person skilled in the art the combination of the subject-matter of claim 1

with the further claims 2 to 12 of the main request. The respondent did not present any further convincing arguments in this regard.

- 1.13 Furthermore, the respondent cited decision T 2392/10, which concerned a situation in which the subject-matter of an amended claim combined several features originally disclosed in separate dependent claims. In that case, one of the features had, in the application as filed, been dependent on further intermediate features that were not included in the amended claim. As a result, the amended claim omitted features that originally formed part of the hierarchical dependency structure associated with that specific limitation.

The situation addressed in T 2392/10 is therefore materially different from the present one. Here, the question is whether there is a direct and unambiguous disclosure for combining the amended claim with additional features from other dependent claims, even though the feature added to the amended claim was originally dependent solely on the independent claim. Accordingly, the Board considers that the reasoning developed in T 2392/10 is not pertinent to the circumstances of the present case.

- 1.14 In view of the above considerations, the Board concluded that there is neither an explicit nor an implicit disclosure in the application as filed for the combination of claim 1 with the further claims 2 to 12 of the main request. Accordingly, the main request does not meet the requirement of Article 123(2) EPC.

2. Admission of auxiliary requests 1 and 2

2.1 The respondent did not file auxiliary requests 1 and 2 until its response to the Board's communication under Article 15(1) RPBA. The admittance of these requests is governed by Article 13(2) RPBA. According to this provision, any amendment to a party's appeal case made after notification of a communication under Article 15(1) RPBA should, in principle, not be taken into account unless there are exceptional circumstances which have been justified with cogent reasons by the party concerned.

2.2 The Board, exercising its discretion under Article 13(2) RPBA, does not take auxiliary requests 1 and 2 into account in the appeal proceedings. In the present case, the objection under Article 123(2) EPC was not introduced unexpectedly at a late stage by the Board. Instead, it had already been raised by the opponent/appellant in the statement of grounds of appeal and, moreover, it formed part of the contested decision. The Board's communication under Article 15(1) RPBA therefore merely developed and assessed objections and arguments that the respondent had long been in a position to address. This significantly undermines any suggestion of "exceptional circumstances" within the meaning of Article 13(2) RPBA. A respondent cannot legitimately postpone its reaction to known objections until the Board's preliminary opinion is available. Otherwise, the strict convergence regime of the Rules of Procedure would be deprived of its purpose. There are thus no exceptional circumstances, justified with cogent reasons by the respondent, that persuade the Board to exercise its discretion to take these requests into account.

- 2.3 The respondent's submission that Enlarged Board of Appeal decision G 1/99 (OJ EPO 2001, 381) confers on the patent proprietor an entitlement to amend the claims whenever the Board raises an objection for the first time in the communication under Article 15(1) RPBA – irrespective of whether the opponent had already relied on the same objection in the statement of grounds of appeal – does not convince the Board.
- 2.4 Although G 1/99 continues to apply under the revised Rules of Procedure of the Boards of Appeal, its ratio decidendi cannot be read as establishing an unconditional right to file claim amendments at any stage of the appeal proceedings. The admissibility of amendments to a party's appeal case after notification of a communication under Article 15(1) RPBA is governed exhaustively by Article 13(2) RPBA. That provision deliberately sets a high threshold: such amendments shall, as a rule, not be taken into account unless exceptional circumstances are demonstrated and supported by cogent reasons. G 1/99 neither contains nor implies any rule capable of displacing this procedural framework.
- 2.5 On the contrary, the headnote of G 1/99 expressly contemplates amendments aimed at overcoming an objection raised in the appeal proceedings in the context of avoiding an inequitable outcome for the patent proprietor in cases of reformatio in peius where the opponent is the sole appellant. Furthermore, the decision identifies under which conditions an amendment may be allowable despite the patent proprietor's procedural position, not when it must be admitted irrespective of the procedural rules of the Boards of Appeal.

2.6 It is thus true that G 1/99 may, in narrowly defined situations concerning the principle of prohibition of reformatio in peius, permit amendments which can place the opponent and sole appellant in a worse position than if they had not appealed. However, even in those situations, the filing and consideration of such amendments remain subject to the normal procedural rules. Accordingly, reliance on G 1/99 cannot be used to circumvent the discretionary admittance provision under Article 13(2) RPBA, particularly where, as is the case here, the objection to be remedied was already on file before issuance of the Board's communication under Article 15(1) RPBA.

3. Admission of auxiliary request 3

3.1 The admission of auxiliary request 3, which was filed for the first time with the reply to the appeal, is left open as it does not fulfil the requirements of Article 123(2) EPC. In particular, auxiliary request 3 still comprises a combination of claim 1 and all the dependent claims of the main request, except for claims 7 and 9, which have been deleted from the set of claims of auxiliary request 3. The addition of the feature "wherein the energy storage unit (5) is a replacement for the bus voltage (UC), so as to supply all units which are otherwise supplied by the bus voltage" to claims 1 and 7 of auxiliary request 3 does not address the objection under Article 123(2) EPC, a point not argued by the respondent. For the same reasons as those given above for the main request, auxiliary request 3 therefore does not meet the requirement of Article 123(2) EPC.

4. Admission of auxiliary requests 4 to 6

- 4.1 The Board, exercising its discretion under Article 13(2) RPBA, does not take auxiliary requests 4 to 6 into account in the appeal proceedings.
- 4.2 The respondent did not file auxiliary requests 4 to 6 in the appeal proceedings until its response to the Board's communication under Article 15(1) RPBA. The reasoning regarding the non-admittance of auxiliary requests 1 and 2 (see point 2.2 above) also applies to auxiliary requests 4 to 6. The Article 123(2) EPC objections that these requests seek to address had already been raised before the opposition division and in the appellant's statement of grounds of appeal. There are thus no exceptional circumstances, justified with cogent reasons by the respondent, that persuade the Board to exercise its discretion to admit these requests.
- 4.3 With regard to auxiliary request 5, the Board notes that this auxiliary request had already been filed in the proceedings before the opposition division. However, this request was not upheld in the reply to the appeal but was newly filed with the response to the communication under Article 15(1) RPBA in the letter of 11 October 2025. It is therefore subject to the admissibility requirements of Article 13(2) RPBA.
- 4.4 As regards the respondent's argument that decision G 1/99 entitles the respondent to file amended claims in response to the Board's communication under Article 15(1) RPBA, the Board refers to the reasons set out under points 2.4 to 2.6 above, which apply equally to auxiliary requests 4 to 6.

5. Rule 106 EPC objection

- 5.1 The Board dismisses the objection under Rule 106 EPC raised during the oral proceedings before the Board.
- 5.2 The parties were given the opportunity to discuss the admission of auxiliary requests 1 and 2 into the proceedings. The respondent relied upon its written submissions on this point. The respondent has not explained why it was prevented from commenting on the grounds for the decision the board has taken on the non-admittance of auxiliary requests 1 and 2. Its objection is clearly not based on the fact that it did not have an opportunity to comment, but rather on the fact that it does not agree with the Board's decision not to take into account auxiliary requests 1 and 2 pursuant to Article 13(2) RPBA.
- 5.3 Moreover, Article 113(1) EPC clearly does not confer an absolute right on parties to present comments as to the substance of a request even when such a request is not admitted. To safeguard the right to be heard, a party only has to be given the opportunity to comment on those grounds which are relevant for the decision to be taken. Thus, in the case of non-admittance of a request the parties have to be given the opportunity to present their arguments in relation to the topic of admittance of the request concerned. It is a very common procedural situation that a party can no longer present arguments as to the substance whenever requests or appeals have not been admitted or are found inadmissible, respectively. This, per se, is not a violation of the right to be heard.
- 5.4 In support of its objection under Rule 106 EPC that its right to be heard had been infringed, the respondent

reiterated its contention that the objection under Article 123(2) EPC was a new objection raised by the Board and its argument that refusing to admit amendments filed in response to that objection was at odds with the principles set out in G 1/99. The Board has already explained in point 2.2 above why the above contention is incorrect and in points 2.3 to 2.6 why the above argument is without merit.

6. Referral of questions to the Enlarged Board of Appeal

6.1 The Board rejects the respondent's request to refer the following questions to the Enlarged Board of Appeal (emphasis in original):

"1) If a Board of Appeal, in its preliminary opinion or during oral proceedings, raises an objection under Article 123(2) EPC against an amendment that was found allowable by the department of first instance, are the principles established in **G 1/99** regarding the patent proprietor's right to be given an opportunity to react still applicable under the Rules of Procedure of the Boards of Appeal 2020?

2) If the answer to question 1 is yes, does the Board's discretion under **Article 13(2) RPBA 2020** allow it to refuse to admit an auxiliary request filed in direct and bona fide response to such a new objection, on the grounds that the circumstances do not qualify as 'exceptional circumstances justified by cogent reasons'?

3) Or, alternatively, must the raising of such a new, decisive objection by the Board itself be considered an 'exceptional circumstance' under Article 13(2) RPBA 2020, obliging the Board to admit at least one

auxiliary request filed to address it, in order to safeguard the patentee's right to be heard under Article 113(1) EPC?"

6.2 Admissibility of questions to the Enlarged Board of Appeal from a board of appeal has three main requirements:

- 1) There is diverging case law (Article 112(1) EPC); or
- 2) The question raises an important question of law (Article 112(1) EPC); and
- 3) An answer to the question is necessary to resolve the case in question (see Article 112(1) (a) EPC and case law as set out in Case Law of the Boards of Appeal, 11th ed., 2025, V.B.2.3.3).

6.3 The respondent has not identified any diverging case law.

6.4 A question referred to the Enlarged Board of Appeal must be required for a decision of the case at hand, and not merely be of general interest.

6.5 A board has a discretion whether to refer questions, even if a point of law of fundamental importance is concerned (see decision T 390/90, OJ EPO 1994, 808, point 2). One of the applicable criteria is whether the question can be answered beyond doubt by the board itself (see decision T 1242/04, OJ EPO 2007, 421, point 10.3). In this case the Board has been able to answer the questions raised beyond doubt, and thus not admitted auxiliary requests 1, 2 and 4 to 6, and hence no referral is necessary.

6.6 A question to which no generally applicable answer can be given will not be referred (see T 972/91).

6.7 In the present case, a decision by the Enlarged Board of Appeal is not required for the purposes enumerated in Article 112 EPC.

6.8 Therefore, the Board rejects the request for referral.

Order

For these reasons it is decided that:

1. The respondent's Rule 106 EPC objection is dismissed.
2. The respondent's request to refer questions to the Enlarged Board of Appeal is rejected.
3. The decision under appeal is set aside.
4. The patent is revoked.

The Registrar:

The Chairman:



L. Gabor

R. Bekkering

Decision electronically authenticated